IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Second Appeal No. 66/2006

Km. Kalawati Verma D/o Late Ghashita Singh Tomar, R/o 221, Khurbura Mohalla, Dehradun .....Appellant.

Vs

1. Smt. Urmila Devi W/o Satish Chand R/o 14/10, Hanuman Chowk, Dehradun.

2. Rajiv Kumar S/o Satish Chand R/o 14/10, Hanuman Chowk Dehradun ..... Respondents

Sri V.K. Kohli, learned Senior Advocate, assisted by Sri I.P. Kohli, learned counsel for the appellant.
Sri Nagesh Aggarwal, learned counsel for the respondents.

Hon'ble B.C. Kandpal, J.

This second appeal has been preferred against the judgment and decree dated 29-7-2006, passed by Civil Judge (S.D.), Dehradun, in Civil Appeal No. 74/1998 whereby the appeals were dismissed and the judgment and decree dated 16-9-1998 passed by the I Addl. Civil Judge (J.D.), Dehradun in O.S. No. 205/1991was confirmed.

2- Brief facts of the case are that the respondent/plaintiffs Rajiv Kumar and Smt. Urmila presented suit No. 205/1991 before the I Addl. Civil Judge (J.D.) Dehradun with the allegations that the disputed property is property No.10, the new number of which is 14/10, Hanuman Chowk Dehradun. Sri Jawahar Lal was the tenant in the said property. He used to reach this shop from the stairs in between the two shops which was being used for the last 60 years. Jawahar Lal died on 14-12-1996 and thereafter Smt. Jain took possession of the property as his legal heir.

Smt. Jain vide sale deed dated 23-1-1967 sold the property along with the tenancy rights to Darshan Lal. In the year 1969 Darshan Lal also died and thereafter his son Satish Chand Rajvanshi came into possession of the disputed property. He also died on 15-3-1988 and on his death his widow Smt. Urmila and his son Rajeev Kumar inherited the disputed property and Smt. Urmila Devi is running a shop on the ground floor and also using the upper part of the shop. It was alleged that the stairs is the only way to reach the upper part of the shop. The defendant/appellants used to tease the plaintiffs/respondents not to use the stairs and they are also not accepting the rent of the property in tenancy. The plaintiffs/respondents deposited the rent in the court in accordance with the provisions of Act No. 13 of 1972. Hence the suit for permanent injunction was instituted.

3- The defendants/appellants filed W.S. before the trial Court and alleged that the room situated in the first floor and the stairs were never in the tenancy of Jawahar Lal. It was also alleged that Smt. Jain had no right to execute the sale deed dated 23-1-1967. It was also alleged that the plaintiff has no right to use the disputed 'Rasta' and the upper room of the property in suit.

4- During the pendency of the suit, the plaintiffs/respondents also filed original suit No. 428/1991 regarding the disputed property and the 'Rasta' to reach the room situated at the first floor under Section 6 of the Specific Relief Act.

5- The defendants/appellants also opposed the suit by filing W.S. and alleged that the plaintiffs has no right to use the disputed 'Rasta' hence no cause of action arose for closing the disputed 'Rasta'.

6- The trial court consolidated both the suits and framed the following issues for determination in O.S. No. 205/1991:-

1- Whether the plaintiffs, shown in the list of property with the plaint, are valid tenants?.
2- Whether the plaintiffs were illegally dispossessed on 30-5-1991 from the disputed property?
3- Whether the suit against the defendants is not maintainable?.

7- In O.S. No. 428/1991, the following issues were framed:-

1- Whether the plaintiffs are in the possession of the disputed property, shown in para-1 of the plaint?.
2- Whether the plaintiffs possession is in accordance with the averments made in para/3 of the plant?.
3- Whether the plaintiff use to keep the baskets, cord and other luggage in the upper room of the disputed property?.
4- Whether on 23-5-1991 the defendant No.2 illegally and forcefully thrown the luggage of the plaintiff from the room and took forcible possession over it?.
5- Whether the suit is barred by limitation?.
6- Whether the suit is undervalued and insufficient court fee has been paid?.

7- Relief?.

8- Parties adduced evidence in support of their case. The learned Addl. Civil Judge (J.D.) decreed the suit of the plaintiffs and directed the defendant Smt. Kalawati to hand over the possession of upper portion of disputed property No. 14/10 and also directed not to restrain the plaintiffs for using the 'Rasta' for going to the upper portion of the property.

9- Feeling aggrieved, the defendants preferred appeals before the Civil Judge (S.D.) Dehradun. The appellate court framed following points for determination:-

1- Whether the finding of the trial Judge is against the evidence and the disputed property is in the possession of the plaintiff?.
2- Whether the conclusion of the trial court, that the defendants dispossessed the plaintiff after presentation of the suit, is erroneous?.
3- Whether the O.S. No. 429/1991 is barred by limitation?.
4- Whether judgment of the trial court is not sustainable by not giving any finding on issue No.6 framed in O.S. No. 429/199?.
5- Whether the judgment is erroneous on the basis of the evidence in the suit?.

10- The first appellate court after hearing the learned counsel for the parties and perusing the evidence dismissed the appeals vide impugned judgment and decree dated 29-7-2006.

11- Thereafter, the defendant/appellant has preferred this second appeal before this court.

12- Heard learned counsel for the parties and perused the record.

13- Perusal of the record shows that originally Jawahar Lal was the tenant of the disputed property and Gyan Chand was the owner of the property, who vide sale deed dated 21.5.1979 sold the same to defendant/appellant. After the death of Jawahar Lal his sister Smt. Jain became tenant and she transferred the rights of the tenancy vide sale deed dated 23.1.1967 to Chowdhary Darshan Lal and Darshan Lal took possession of the property as tenant. In this regard a case No. 54/167 was presented before the Rent Control and Eviction Officer, who vide his order dated 28-3-1967 allotted the property to Darshan Lal. After the death of Darshan Lal, his son Satish Chandra came into possession of the property as tenant and then the plaintiffs the legal representatives of Satish Chandra are the tenants in the property. The sale deed dated 1-5-1979 which was executed in favour of defendant No.2 shows that the disputed property has been shown as double storied shop and the rent of both the rooms has been shown as Rs. 300/- per year. The tenants of the disputed property have been using the 'Rasta' situated towards the south of the disputed shops. It has come on record that the disputed property has been in use for the last 60 years and earlier the dispute of the 'Rasta' was not there, hence the tenants were using the disputed 'Rasta'.

14- I have also perused findings of both the courts below, which show that both the courts below have discussed the issues involved in the case in detail and

have given concurrent findings of fact. No substantial question of law is involved in this second appeal. This court has no jurisdiction to interfere with the concurrent finding of fact howsoever erroneous may be in the second appeal.

15- The appeal lacks merit and is liable to be dismissed.

16- Accordingly the appeal is dismissed in limine.

(B.C. Kandpal, J.)

Dated: October 18, 2006

Aswal.